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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/904,234      | 07/12/2001  | Andrea Griseri       | 9728.231US01        | 2120             |

7590 09/13/2002

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EXAMINER

FOOTLAND, LENARD A

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3682

DATE MAILED: 09/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/904,234

Applicant(s)

GRISERI ET AL.

Examiner

Lenard A. Footland

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-5 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

----- This application contains claims directed to the following  
patentably distinct species of the claimed invention: the species of  
Figures 2-3 versus that of Fig. 4.

Applicant is required under 35 U.S.C. § 121 to elect a single  
disclosed species for prosecution on the merits to which the claims  
shall be restricted if no generic claim is finally held to be allowable.  
Currently, claim 1 is generic.

Applicant is advised that a response to this requirement must  
include an identification of the species that is elected consonant  
with this requirement, AND A LISTING OF **ALL** CLAIMS READABLE  
THEREON (**NOT**, FOR EXAMPLE, "AT LEAST CLAIMS..."),  
INCLUDING **ANY CLAIMS SUBSEQUENTLY ADDED**, AND IF THE  
AMENDMENT OF ANY CLAIMS RESULTS IN A CHANGE OF THE  
SPECIES THEY READ UPON, THAT TOO SHOULD BE INDICATED.  
FAILURE TO DO SO MAY RESULT IN A HOLDING OF  
NONRESPONSIVENESS. An argument that a claim is allowable or  
that all claims are generic is considered nonresponsive unless  
accompanied by an election.

Upon the allowance of a generic claim, applicant will be  
entitled to consideration of claims to additional species which are  
written in dependent form or otherwise include all the limitations of  
an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims  
are added after the election, applicant must indicate which are  
readable upon the elected species. M.P.E.P. § 809.02(a).

-----Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

The elected species is limited to the features set forth in the elected figures, and does not include features not illustrated in those figures, or illustrated in other figures. Accordingly, applicant should review all claims to ensure that all features of the elected species are properly illustrated, as required, in order to avoid a holding that an unillustrated feature does not form part of the elected species.

A telephone call was made to attorney Gresens on to request an oral election to the above restriction requirement, but did not result in an election being made.

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Any inquiry concerning this communication or earlier  
communications from the examiner should be directed to Lenard A.  
Footland, whose telephone number is (703) 308-2683.



**Lenard A. Footland**

**Primary Examiner  
Technology Center 3600  
Art Unit 3682**

laf  
September 12, 2002